

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1040 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
DINESHBHAI N PATEL THRO'POWER OF ATTORNEY

Versus

KUNDANBEN WD/O CHHOTALAL MOTIBHAI

-----  
Appearance:

MR RN SHAH for Petitioners

MR ZUBIN F BHARDA for Respondent No. 1, 2, 3, 4

-----  
CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/04/99

ORAL JUDGEMENT

1. The original plaintiff no. 2 - Narotambhai Premabhai Patel died during the pendency of suit bearing R.C.S. No. 7 of 1992. Other plaintiffs were on record. The heirs of deceased plaintiff no. 2 prayed for bringing them on the record of the suit in place of deceased plaintiff no.2. The suit was for declaration and injunction with regard to respective rights of the

parties to the suit property. Since the application for bringing heirs was not moved within prescribed period of 90 days, the learned Civil Judge (J.D.) Chikhli by his impugned order dated 30/6/1997 observed that the suit abated in so far as deceased plaintiff was concerned. The heirs also prayed for setting aside abatement and condonation of delay in respect of that prayer. The learned Judge also rejected that prayer. That is how the petitioners are before this Court.

2. A preliminary objection has been taken by Mr. Zubin Bharda, learned advocate for the opponents that this revision application should not be entertained as the petitioners have remedy by way of Appeal From Order under Order 39 Rule 1 (k) of Civil Procedure Code. Mr. R.N. Shah, learned advocate for the petitioners submits that he would prefer appropriate appeal from order before the District Court under this provision. While dismissing this revision application the petitioners are set at liberty to move an appropriate appeal before the District Court while also praying for condonation of delay in filing appeal bearing in mind that revision application was filed in this Court. As and when the appeal is moved, the District Court will deal with and decide the same in accordance with law.

Subject to this, rule is discharged.

\* \* \*

PVR.